1974 S.C. Op. Atty. Gen. 40 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3693, 1974 WL 21212

Office of the Attorney General

State of South Carolina
Opinion No. 3693
January 15, 1974

***1** R. Markley Dennis, Esquire
Attorney at Law
P. O. Box 1174
Moncks Corner, South Carolina 29461

Dear Mr. Dennis:
You have recently posed the following question to this office:
When a judgement is rendered for 'x dollars and costs', does the clerk of court or prevailing attorney decide what dollar amount will be recorded in the judgement book?

The point of uncertainty in this question as presented seems to be the determination of the amount of cost. Section 10–1606 of the 1962 Code of Laws of South Carolina indicates that the clerk of court should enter the cost, upon proof of disbursements by the prevailing attorney. When there is a dispute as to the cost, the clerk of court should make the decision. If the prevailing attorney believes the clerk to be in error, then the correct and proper procedure is appeal to the trial court. [See 11 SCLQ 121 (1959) Handbook of Trial and Appellate Practice—Judgments.]

You have also inquired as to the proper time for service of papers in both Title 10 and Title 43 Claim and Delivery Actions. You stated that in Title 10, Section 10–2505 and Section 10–2507 the provisions seem to be confusing in that they appear to be conflicting. You state that there is similar confusion between Section 43–173 and Section 43–175 in Title 43 of the 1962 Code.

In Title 43 Claim and Delivery Actions, Section 43–173 (1972 Cum. Supp.) describes which papers will be issued by the magistrates and sets out the sequence of events in relation to the new requirements of a preseizure hearing. Section 43–175 (1972 Cum. Supp.) then directs the constable to serve the papers on the defendant. The basic outline of the action is then either of two procedures:

(1) When the immediate seizure is sought by the plaintiff through Section 43–185 (1972 Cum. Supp.) or Section 43–187 (1972 Cum. Supp.), then no restraining order (Section 43–186) or notice of right to preseizure hearing is served and no preseizure hearing is required. (Note that Section 43–188 requires a copy of plaintiff's immediate seizure affidavit to be served on defendant). The property is seized by the constable and the case will be tried on the merits.

(2) If immediate seizure is not sought through either Section 43–185 or Section 43–187 then in addition to the plaintiff's undertaking, affidavit and summons, the magistrate must issue, and the constable will serve notice of right to preseizure hearing and the restraining order. The defendant may demand a preseizure hearing to determine who should possess the property during the pendency of the case. If no demand is made then the magistrate should direct the constable to seize the property. Whether a preseizure hearing is had, or not, and regardless of who is given possession of the property, the case is still to be tried on the merits.

Similarly, with Title 10 Claim and Delivery, Section 10–2505 (1972 Cum. Supp.) should be read to discern when seizure of the property should occur in relation to the preseizure hearing requirement. Section 10–2507 (1972 Cum. Supp.)

directs a sheriff to serve the appropriate papers and to seize the property only after the clerk or judge has endorsed them; endorsement would occur only after one of the conditions listed in Section 10–2505 has been met.

***2** This action is only for acquisition of immediate possession of the property by the plaintiff. There should be issued initially a summons and complaint to institute the suit and a trial should be had to determine the case, regardless of the Claim and Delivery for possession.

I hope that the above will constitute a complete answer to the questions which you have posed. If it does not I would appreciate you contacting me with any further questions which you may have.
Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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